

April 2019

## Panel: Progressive State Responses to Janus

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## **CALIFORNIA ATTORNEY GENERAL XAVIER BECERRA ADVISORY**

### **Affirming Labor Rights and Obligations in Public Workplaces**

Attorney General Becerra re-affirms his full support for labor rights in California. Public employees in California (Including teachers, higher education and school employees, first responders, nurses, and city, county and state workers) provide essential services to the state's 40 million residents. The state's collective-bargaining laws help ensure such important conditions of employment as workplace safety, fair wages and hours, and protected leave. They also promote open communication between employers and employees, and the efficient operation of public workplaces across the state.

The Attorney General provides this advisory concerning the rights of public-sector employees following the United States Supreme Court's decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31 et al.* (AFSCME), 138 S.Ct. 2448 (2018). In *Janus*, the Supreme Court overturned four decades of legal precedent to rule that it is unconstitutional for public-sector unions to collect "agency fees"—also known as "fair-share" fees—from public employees who choose not to join the union. Therefore, a California public-sector employer may no longer automatically deduct a mandatory agency fee from the salary or wages of a non-member public employee who does not affirmatively choose to financially support the union.

In addition, other public-employee rights and public-employer obligations under California law are unchanged by the *Janus* decision. This means that, under California's public-sector collective-bargaining statutes, public employees in California continue to have the right to form, join, and participate in unions to represent them in matters of employer-employee relations. And public-sector employers are prohibited from retaliating or discriminating against employees for exercising their protected rights.

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These rights and obligations are summarized below:<sup>1</sup>

### **Obligations of Public Employers**

It remains unlawful for a public-agency employer to:

- Retaliate or discriminate against, or threaten to retaliate or discriminate against, employees for exercising their protected rights to engage in collective action (Gov. Code §§ 3502.1, 3506.5, 3519, 3543.5);
- Interfere with employees' exercise of their protected rights to engage in collective action, or deter or discourage employees or applicants for public-sector jobs from joining a union (Gov. Code §§ 3550, 3506, 3519, 3543.5);
- Refuse to meet and confer in good faith with a union (Gov. Code §§ 3505, 3506.5, 3517, 3519, 3543.5); and
- Interfere with the formation or administration of a union, or support or show preferential treatment for a union (Gov. Code §§ 3506.5, 3543.5, 3519).

### **Rights of Public Employees**

Under California law, public employees retain the rights to:

- Form, join, and participate in the activities of their union for purposes of representation on wages, hours, and other conditions of employment (Gov. Code §§ 3502, 3515, 3543);
- Refrain from joining or participating in the activities of a union, or cancel or change deductions to the union (Gov. Code §§ 3502, 3515, 1153); and
- File an unfair practice charge with the Public Employment Relations Board (Gov. Code §§ 3509, 3514.5).

### **Payroll Deductions**

Dues, initiation fees, and assessments for those public employees who choose to become union members may still be automatically deducted from members' salaries and wages. (Gov. Code §§ 3508.5, 3515.6, 3543.1.)

For information on filing a union grievance concerning wages, hours, and other conditions of employment, consult the applicable Bargaining Unit Contract.

For information on filing an unfair practice charge under the applicable state labor-relations law, visit the Public Employment Relations Board (PERB) website at [www.perb.ca.gov](http://www.perb.ca.gov).

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<sup>1</sup> This summary, and the accompanying statutory references, are not intended to be a comprehensive description of all current California laws that govern, or otherwise pertain to, public-sector labor relations.



STATE OF CONNECTICUT  
**ATTORNEY GENERAL GEORGE JEPSEN**

**General Guidance Regarding the Rights and Duties of Public-Sector Employers and Employees  
in the State of Connecticut after *Janus v. AFSCME Council 31*.**

Connecticut has a long and important tradition of supporting the organized labor movement and the fundamental right of workers to organize. Public sector employees play a crucial role in communities across Connecticut. Each day they work hard to ensure public safety, to protect public health, to educate our children, and to provide other critical services to our residents.

The Supreme Court of the United States issued a decision in *Janus v. AFSCME Council 31*, 585 U.S. \_\_\_, 138 S. Ct. 2448 (2018) on June 27, 2018. The *Janus* decision overturned decades of well-established law and practice relating to the right of a union to receive the payment of fair share agency fees from public-sector employees who decline union membership. **The only change under *Janus* is that now public employers may not deduct agency fees from a non-member's wages, nor may a union otherwise collect agency fees from a non-member, without the non-member employee's affirmative consent.**

All other rights and obligations of public sector employees and employers under state law remain the same. Public-sector employees retain their statutory rights under Connecticut law to organize, to join unions, and to engage in collective action for mutual aid or protection under Connecticut law. C.G.S. §§ 5-270 *et seq.*; 7-467 *et seq.*

**Public-Sector Employee Rights**

Under Connecticut's collective bargaining laws post-*Janus*, public-sector employees retain the right to:

- Self-organize;
- To join or assist any employee organization;
- To bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment; and

- To engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. C.G.S. §§ 5-271(a), 7-468(a).

Employees also retain the right to be free from actual interference, restraint or coercion. Id. Namely, employers or their representatives or agents are prohibited from:

- Interfering, restraining or coercing employees in the exercise of their rights guaranteed in either section 7-468 or section 5-271, whichever is applicable;
- Dominating or interfering with the formation, existence or administration of any employee organization;
- Discharging or otherwise discriminating against an employee because he or she has signed or filed any affidavit, petition or complaint or given any information or testimony under either sections 7-467 to 7-477, inclusive, or under sections 5-270 to 5-280, inclusive, whichever is applicable.
- Refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with applicable state provisions as the exclusive representative of employees in an appropriate unit; and
- Such other acts as delineated in C.G.S. §§ 7-470 or 5-272.

### **Union Dues and Agency Fees**

The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and it does not impact any other bargained for provision contained in a collective bargaining agreement. **The *Janus* decision only impacts the payment of an agency fee from a non-member who declines union membership.** Therefore, existing membership cards or other agreements by union members to pay dues should continue to be honored.

Employees who are non-members and were paying agency fees as of June 27, 2018, however, may choose to become dues paying union members and their dues may be paid through a payroll deduction.

### **Access to Member Information**

Under the Connecticut Freedom of Information Act ("FOIA"), except as otherwise provided by federal law or state statute, all records maintained or kept on file by any public agency shall be public records, subject to disclosure. C.G.S. § 1-210(a). Personnel or medical files and similar files, however, may not be disclosed if the determination is made that disclosure of such documents would constitute an invasion of personal privacy. C.G.S. § 1-210(b).

Some public-sector unions have negotiated for the right to include, or exclude, certain information from personnel files, and/or to prohibit disclosure of certain information under the Connecticut FOIA. For example, Article 9, Section 8, of the collective bargaining agreement for the Connecticut Correction Supervisors Unit (NP-8) prohibits disclosure of bargaining unit employees' personnel file where the request for disclosure is made by an inmate, or made by someone on behalf of the inmate.

*Public-Sector employees who believe their rights to join or form a union have been violated may contact the Connecticut State Board of Labor Relations at (860) 263-6860 or visit <https://www.ctdol.state.ct.us/csblr/> (<https://www.ctdol.state.ct.us/csblr/>) for more information.*



## OFFICE OF THE ATTORNEY GENERAL STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 20, 2018

### **Guidance Regarding Rights and Duties of Public Employees, Public Employers, and Public Employee Unions after *Janus v. AFSCME Council 31***

In every community in Illinois, public sector employees provide important services. Illinois law has long recognized the rights of these employees. Illinois Attorney General Lisa Madigan issues this Guidance to address the specific impact of the United States Supreme Court's recent ruling in *Janus v. AFSCME Council 31*, 585 U.S. \_\_\_\_ (2018), on public sector employees in Illinois.

The Court's decision in *Janus* overturned the long-established principle that public employees who decline union membership may be required to pay a fair share agency fee to support collective bargaining and other representational activities that the union is required to provide to employee members and non-members alike. Before *Janus*, the laws of 22 states, including Illinois, permitted unions to negotiate for the deduction of such agency fees. Under *Janus*, these fees cannot be collected from employee non-members without their affirmative consent.

*Janus* does not change any of the other rights and obligations regarding public and educational employment under Illinois law. Public employees retain their rights under Illinois law to organize and join unions, and existing collective bargaining agreements remain in effect. This Guidance affirms those rights and provides initial direction on union dues and agency fees in light of the *Janus* decision.

### **Payroll Collection and Dues Checkoff**

Under *Janus* public employers may not collect agency fees from non-members without their affirmative consent.

- Employees who are not currently union members may choose to become dues-paying union members.
- Employees who continue to decline union membership can continue to pay agency fees if the union offers that option and the employee provides consent. Otherwise no agency fee may be deducted.

The *Janus* decision does not impact collection of union dues from union members or any preexisting arrangements regarding these dues. Employee union members' existing choices as to membership cards, payroll deductions, and other agreements must be honored.

- Under Illinois law, public and educational employees may pay dues through a voluntary payroll deduction negotiated by their exclusive representative.
- Nothing in *Janus* changes the validity of existing union member employees' prior authorization of dues deductions or requires existing union members to reaffirm their prior authorization.

### **Collective Action Rights**

The *Janus* decision also has no effect on the existing collective action rights of public and educational employees in Illinois. Just as prior to the decision, after *Janus* Illinois law continues to protect the rights of public employees to:

- Self-organize;
- Form, join, or assist any labor organization;
- Bargain collectively through representatives of their own choosing; and
- Engage in other concerted activities.<sup>1</sup>

Furthermore, public and educational employees may exercise any and all of these rights without interference, restraint or coercion from their employer.<sup>2</sup> Public and educational employers may not discriminate with regard to hiring, termination, or any other term or condition of employment in order to discourage union membership or support.<sup>3</sup> Public and educational employers also cannot refuse to bargain collectively in good faith with the union as exclusive representative.<sup>4</sup>

### **Access to Member Information**

Under the Freedom of Information Act, private information, such as home addresses, home telephone numbers, personal cell phone numbers and personal email addresses, is protected from disclosure to third parties.<sup>5</sup>

However, exclusive bargaining representatives of public employees are entitled to access names and addresses of union members pursuant to state law.<sup>6</sup> Exclusive representatives of both public and educational employees may also be permitted access to similar information pursuant to collective bargaining agreements.

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<sup>1</sup> 5 ILCS 315/6(a); 115 ILCS 5/3(a); *see also* 5 ILCS 315/10(a)(1); 115 ILCS 5/14(a).

<sup>2</sup> 5 ILCS 315/6(a), 315/10(a)(1); 115 ILCS 5/14(a)(1).

<sup>3</sup> 5 ILCS 315/10(a)(2); 115 ILCS 5/14(a)(3).

<sup>4</sup> 5 ILCS 315/10(a)(4); 115 ILCS 5/14(a)(5).

<sup>5</sup> 5 ILCS 140/2(c-5) and 7(1)(b).

<sup>6</sup> 5 ILCS 315/6(c).

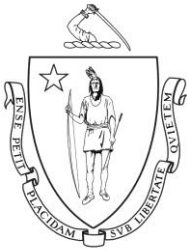


## Resources

*Public employees or unions who believe that any of the above rights have been violated may contact the Illinois Labor Relations Board by calling 312-793-6400 (Chicago) or 217-785-3155 (Springfield), or by visiting <https://www2.illinois.gov/ilrb/Pages/default.aspx>.*

*Educational employees or unions who believe that any of the above rights have been violated may contact the Illinois Educational Labor Relations Board by calling 312-793-3170 (Chicago) or (217) 782-9068 (Springfield), or by visiting <https://www2.illinois.gov/sites/elrb/Pages/default.aspx>.*

*Illinois residents, public bodies, and school districts with additional questions about the Janus decision or other labor or employment concerns may also contact the Illinois Attorney General's Workplace Rights Bureau at 1-844-740-5076.*



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**Attorney General Advisory:**  
**Affirming Labor Rights and Obligations in Public Workplaces**

Public sector employees—including firefighters, police, teachers, social workers, and sanitation workers—play a critical role in our communities and across Massachusetts. They work hard every day to ensure public safety, protect public health, educate our children, and to provide other critical services to our residents.

The Attorney General issues this Advisory in response to the recent ruling of the Supreme Court of the United States in *Janus v. AFSCME Council 31*, 585 U.S. \_\_\_\_ (2018). The *Janus* decision overturns decades of well-established law and practice relating to the right of a union to require the payment of fair share agency fees from public sector employees who decline union membership. Under *Janus*, public employers may not deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the employee's affirmative consent.

All other rights and obligations of public sector employees and employers under state law remain. Public employees retain their statutory rights under Massachusetts law to organize, to join unions, and to engage in collective action for mutual aid or protection under Chapter 150E of the Massachusetts General Laws. The Attorney General's Office issues this advisory in affirmation of those rights and to provide initial guidance on the issue of union dues and agency fees.

**Collective Action Rights**

- Under Massachusetts law, the rights of public sector employees are unaffected by the decision in *Janus*. These employees maintain the right to:
  - organize;
  - form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment; and
  - engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. M.G.L. c. 150E, § 2.
- Employees also have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity. M.G.L. c. 150E, § 10.

- Public employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to bargain in good faith with the union. M.G.L. c. 150E, § 10.

### **Dues & Agency Fees**

- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored. The opinion only impacts the payment of an agency service fee by individuals who decline union membership.
- Under *Janus*, public employers may not deduct agency fees from a nonmember's wages without the employee's affirmative consent.
- Employees who are nonmembers and paying agency fees as of June 27, 2018 may choose to become a dues paying union member.
- Employees may pay dues through a payroll deduction. Under existing state law, employees may authorize a payroll deduction by notifying his/her employer in writing. *See* M.G.L. c. 180, § 17A. This writing may be a signed union card, or an electronic writing, signature or voice recording consistent with M.G.L. c. 110G, § 2.
- Public employers may not threaten or coerce employees regarding union membership. M.G.L. c. 150E, § 10.

### **Member Access & Information**

- Many public sector unions have negotiated for the right of their members to use the employer's email systems and its premises to engage in protected concerted activity.
- Under M.G.L. c. 150E, and under many collective bargaining agreements, public employers are required to provide, in a timely manner, the collective bargaining representative with the names and contact information of any newly hired employees.
- Public employees have the right to keep their personal information protected by their employer. An employee's personal information, such as home address, personal email address, home or mobile telephone numbers, and other contact information is protected from disclosure to third parties (with limited statutory exceptions, including collective bargaining representatives). *See* M.G.L. c. 4, § 7 (26)(o); and M.G.L. c. 66, § 10.

*Workers who believe their rights to join or form a union have been violated may contact the Massachusetts Department of Labor Relations at (617) 626-7132 or visit [www.mass.gov/dlr](http://www.mass.gov/dlr).*

*Workers who believe their right to earned wages have been violated may call the AGO's Fair Labor Division Hotline, 617-727-3465.*

BRIAN E. FROSH  
ATTORNEY GENERAL



MEDIA CONTACTS:  
[PRESS@OAG.STATE.MD.US](mailto:PRESS@OAG.STATE.MD.US)  
410-576-7009

## PRESS RELEASE

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### **Attorney General Frosh Issues Advisory Affirming Public Sector Workers' Rights in the Wake of U.S. Supreme Court Ruling in *Janus v. AFSCME***

**BALTIMORE, MD (July 23, 2018)** – Maryland Attorney General today issued an [advisory](#) reaffirming public employee rights and employer obligations under state law in response to the U.S. Supreme Court's recent ruling in *Janus v. AFSCME Council 31*. In the 5 to 4 ruling, the Court overturned decades of law and practice relating to the right of a union to require the payment of fair-share agency fees from public-sector unions that serve teachers, police, firefighters, and other public employees.

Not surprisingly, the decision has generated confusion about the rights of Maryland's public-sector workers under Maryland's labor and collective bargaining laws. In *Janus*, the Supreme Court held that public employees who choose not to join a union may no longer be compelled to pay fair-share agency fees to their exclusive bargaining representative absent the employee's affirmative consent. However, the Supreme Court's ruling does not change the existing rights of public employees under Maryland's labor and collective bargaining laws or the relationship between public-sector unions and their members.

The purpose of the Attorney General's guidance is to summarize the effect of the *Janus* decision and to reiterate the existing protections for public-sector workers in Maryland. For example, eligible State government employees covered by the State Labor Relations Act (including eligible employees of State colleges and universities) have the right, among other things, to:

- Form, join, support, or participate in any employee organization;
- Be fairly represented by their exclusive representative in collective bargaining;
- Engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection;
- Be free from employer interference, restraint, or coercion in the exercise of their rights under Title 3 of the State Personnel & Pensions Article, as well as to be free from other unfair labor practices.

The First Amendment also provides public sector employees with the right to freely associate—including the right to form, join, and belong to unions, and to discuss the advantages of joining. This right is separate and distinct from Maryland's collective bargaining laws, and provides an additional layer of protection for public-sector employees who wish to engage in lawful union activity.

**Resources:**

The State of Maryland has three labor relations boards that resolve disputes arising under the State's collective bargaining laws :

- The [State Labor Relations Board](#) has jurisdiction over the principal departments within the Executive Branch and various other agencies and departments.
- The [State Higher Education Labor Relations Board](#) has jurisdiction over Maryland's institutions of higher education, including the constituent institutions of the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College.
- The [Public School Labor Relations Board](#) has jurisdiction over county boards of education and the Baltimore City Board of School Commissioners.



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## Aug-22-18 Joint Guidance on the Rights of Public Sector Workers and Employers

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### Joint Guidance on the Rights of Public Sector Workers and Employers After Janus

On June 27, 2018, the United States Supreme Court issued its decision in **Janus v. AFSCME Council 31**, 585

U.S. \_\_\_\_ (2018). This advisory clarifies the rights of public sector employers and employees following that

decision. While the **Janus** decision concluded that public sector employees who decline union membership are

not required to make “agency fee” payments to public unions unless they provide consent, **Janus** does not otherwise determine the rights and obligations of New Jersey’s public sector employees and employers.

### **Janus, Union Dues, and Agency Fees**

For over 40 years, the payments that public sector employees who had declined membership made to unions were governed by **Abood v. Detroit Board of Education**, 431 U.S. 209 (1977). Under **Abood**, states could—and New Jersey did—require these union nonmembers to pay “agency fees,” or a percentage of the union dues in return for the services the union provided them. As this guidance explains, **Janus** does not affect the union dues that members pay. **Janus** does, however, govern agency fees paid by union nonmembers.

The **Janus** decision does not speak to the rights of union members, which are still governed by the same New Jersey statutes and contracts:

- Public sector employees, including nonmembers who paid agency fees as of June 27, 2018, may still decide to become a dues paying union member. Union members may still choose to pay their dues through a payroll deduction. J.S.A. 52:14-15.9e. Nothing in **Janus** impacts any agreements between a union and its members to pay union dues.

- An employee may authorize a payroll deduction by notifying his/her employer in writing. N.J.S.A. 52:14-15.9e.

This writing may be in the form of a signed union card, or an electronic writing, or a signature consistent with

N.J.S.A. 12A:12-2.

- Existing membership cards or other agreements by union members to pay dues should be honored. While **Janus** states that employees must provide clear and affirmative consent before payments may be deducted, these signed union cards, electronic writings, and signatures discussed above satisfy that requirement.

The **Janus** decision does speak to the rights of employees who **declined** union membership:

- Under **Janus**, public employers may no longer deduct agency fees from a nonmember's wages without first obtaining the employee's clear and affirmative consent. Public sector employers should cease taking agency fee deductions from current union nonmembers as soon as feasible, if they have not already done so.

## Other Rights of Public Sector Employees, Employers, and Unions

- **Janus** does not impact the ongoing constitutional and statutory rights of employees to, among other things, organize; form, join, or assist any employee organization for the purpose of negotiating collectively through



representatives; and engage in lawful, concerted activities for the purpose of collective negotiations or other mutual aid or protection. J. Const., article I, cl. 19; N.J.S.A. 34:13A-5.3 et seq.

- Employees also have the right to be free from threats, interference, and coercion when deciding whether or not to join a union, and when exercising their rights to engage in concerted activity. J.S.A. 34:13A-5.4, 5.14.
- Employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to negotiate in good faith with the union. J.S.A. 34:13A-5.4. Employers may not encourage or discourage an employee from joining, forming or assisting an employee organization. N.J.S.A. 34:13A-5.14.
- Public employers are required to provide the collective negotiating representative with the names and contact information of newly hired N.J.S.A. 34:13A-5.13.
- Employees have the right to keep their personal information protected from disclosure, with exceptions for collective negotiating representatives. J.S.A. 34:13A-5.13, 47:1A-1.
- Workers who believe their rights to join or form a union have been violated may contact the Public Employment Relations Commission. <https://www.state.nj.us/perc>



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OFFICE OF THE ATTORNEY GENERAL



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**Attorney General Advisory**

**Guidance for Public Sector Employers and Employees after *Janus v. AFSCME Council 31***

New Mexico has a long and important tradition of supporting the organized labor movement and the rights of workers to organize. Our unionized public sector employees - including teachers, firefighters, police officers, child welfare workers, and other public employees - provide vital services that benefit all of our communities in New Mexico.

The United States Supreme Court's recent decision in *Janus v. AFSCME Council 31*, 585 U.S. \_\_\_, 138 S.Ct. 2448 (2018) overturns decades of well-established law and the practice of unions to receive payment for fair share agency fees from public sector employees who decline union membership. After *Janus*, there has been confusion. This Advisory is intended to provide clarity to public sector employers and employees.

The only change under *Janus* is that public employers may no longer deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the nonmember employee's affirmative consent<sup>1</sup>. All other rights and obligations of public employees and employers remain the same under the Public Employee Bargaining Act ("PEBA"), NMSA 1978, Sections 10-7E-1 to -26 (2003, as amended through 2005).

**Collective Action Rights**

- The rights of public employees not affected by *Janus* under New Mexico law are:
  - The right to organize;
  - The right to choose a labor organization;
  - The right to join a labor organization;
  - The right to engage in lawful, concerted activities for the purpose of collective bargaining; and
  - The right to be represented by a labor organization of their own choosing for the purpose of bargaining collectively on questions of wages, hours and other terms and conditions of employment.

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<sup>1</sup> Footnote 6 in *Janus* indicates that if a public employee requests to use a union's grievance or arbitration procedure on its behalf, a union can charge for the reasonable cost of using such procedure.

- Public employers shall not discriminate against a public employee because of the employee's membership in a labor organization or "interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act." NMSA 1978, § 10-7E-19 (2003).

### **Dues and Agency Fees**

- The *Janus* decision does not affect any agreements between a union and its members to pay union dues. Existing agreements by union members to pay dues should continue to be honored.
- The *Janus* opinion *only* impacts the payment of an agency service fee, often referred to as fair share fees, by individuals who decline union membership. Under *Janus*, public employers may *not* deduct agency fees from a nonmember's wages nor may the union collect agency fees from a nonmember, without the nonmember employee's affirmative consent.
- Employees who are nonmembers and paying agency fees may choose to become dues-paying union members.
- Union member employees may pay dues through a payroll deduction.

### **Member Access and Information**

- Many public sector unions have negotiated for the rights of their members to use the employer's premises and equipment to engage in protected concerted activity. Nothing in the *Janus* opinion affects those rights.
- Employers should continue to honor any agreements or contracts that are not contrary to the *Janus* prohibition on deducting agency fees from a nonmember's wages without that employee's affirmative consent.

*Workers who believe their rights have been violated may contact their employer or their union.*

## Guidance for Public-Sector Employers and Employees in New York State

New York State has a long and important tradition of supporting the organized labor movement and the fundamental right of workers to organize. Public-sector employees play a crucial role in communities across New York State. Each day they work hard to ensure public safety, protect public health, and to provide other critical services to New York residents.

The Supreme Court of the United States issued a decision in *Janus v. AFSCME Council 31*, 585 U.S. \_\_\_\_, 138 S.Ct. 2448 (2018) on June 27, 2018. The *Janus* decision overturned decades of established law and practice relating to the right of a union to receive the payment of fair share agency fees from public-sector employees who decline union membership. As a result, there has been much confusion and this Guidance is intended to provide clarity to employers and employees. The only change under *Janus* is that public employers may not deduct agency fees from a non-member's wages, nor may a union otherwise collect agency fees from a non-member, without the non-member employee's affirmative consent. All other rights and obligations of public-sector employers and employees under state law remain unchanged. For example, unions have, in the past, presented dues deduction cards, or other similar evidence of union membership such as membership lists, to public employers and those employers previously collected union dues from its employees on that basis. The decision in *Janus* does not require a union to obtain new dues deduction cards or obtain other evidence of union membership or remove a public employer's obligation to collect dues from members of a union. Public employee unions are not required to produce dues authorizations cards for members from whom the employer has previously deducted dues.

### Collective Bargaining

- Under New York law, the rights of public-sector employees to collectively bargain are unaffected by the decision in *Janus*. Employees maintain the right to:
  - organize;
  - form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment; and
  - engage in lawful, concerted activities for the purpose of collective bargaining.
- Employees also continue to have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity.
- Public employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to bargain in good faith with a union.

### Union Dues & Agency Fees

- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues must be honored. The *Janus* decision only impacts the mandatory collection of an agency fee by individuals who decline union membership.
- Employees who are non-members and paying agency fees may choose to become dues paying union members.
- Employees may pay dues through a payroll deduction.

## Member Access & Personal Information

- Under many collective bargaining agreements, and under Civil Service Law § 208, public employers are required to provide in a timely manner, the collective bargaining representative with the names and contact information of any newly hired employees.
- Public employees have the right to keep their personal information protected by their employer. An employee's personal information, such as home address, personal email address, home or mobile telephone numbers, and other contact information is protected from disclosure (with limited exceptions).

*Employees who believe their rights have been violated should contact their employer or their union.*

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### **Attorney General Advisory:** **Affirming Labor Rights and Obligations in Public Workplaces**

Public sector employees play a critical role throughout the state of Oregon. They work hard every day to ensure public safety, protect public health, educate our children, and provide other critical services to Oregonians.

The Attorney General issues this advisory in response to the recent ruling of the Supreme Court of the United States in *Janus v. AFSCME Council 31*, 585 US \_\_\_, 138 S Ct 2448 (2018). The *Janus* decision overturns decades of well-established law and practice relating to the right of a union to require the payment of fair share agency fees from public sector employees who decline union membership. Under *Janus*, public employers may not deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the employee's affirmative consent.

All other rights and obligations of public sector employees and employers under state law remain. Public employees retain their statutory rights under Oregon law to organize, to join unions, and to engage in collective action for mutual aid or protection under the Oregon Public Employee Collective Bargaining Act (PECBA). The Attorney General's Office issues this advisory to clarify those rights and to provide information on the issue of union dues and agency fees.

### **Collective Action Rights and Restrictions**

- Under Oregon law, public sector employees maintain the right to:
  - Organize;
  - Form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations, ORS 243.662; and
  - Be free from interference, restraint or coercion when exercising their protected rights to engage in collective bargaining, ORS 243.672(1)(a).
- Public employers are prohibited from:

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- Interfering with or assisting in the formation, existence or administration of any employee organization, ORS 243.672(1)(b);
- Discriminating in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization, ORS 243.672(1)(c); and
- Refusing to bargain collectively in good faith with the exclusive representative of the employees, ORS 243.672(1)(e).

### **Dues & Agency Fees**

- The *Janus* opinion only applies to the payment of an agency service fee by individuals who decline union membership. The *Janus* decision does not impact any agreements to pay union dues between a union and its members to pay union dues. Existing membership cards or other agreements by union members to pay dues should continue to be honored.
- Under *Janus*, public employers may not deduct agency fees from a nonmember's wages without the employee's affirmative consent. Employees who are nonmembers and paying agency fees as of the date of the opinion (June 27, 2018) may choose to become dues-paying union members.
- Employees may pay dues through a payroll deduction. Under state law, employees may authorize a payroll deduction by notifying their employer in writing. ORS 292.055.
- Public employers may not interfere with, restrain or coerce employees regarding union membership. ORS 243.672(1)(a).

### **Member Access & Information**

- Many public sector unions have negotiated provisions allowing for the use of the employer's facilities and equipment for meetings, communication and administration of the collective bargaining agreement.
- Under PECBA and often in collective bargaining agreements, public employers are required to provide the collective bargaining representative with the names and contact information of any newly hired employees, in a timely manner.
- Public employees' personal information, including home addresses, is exempt from disclosure to third parties by their employer (with limited exceptions, including disclosure to collective bargaining representatives). See ORS 192.355(2)(a) and ORS 192.345(7).

*Workers who believe their rights have been violated may contact their union or call the Employment Relations Board at 503-378-3807.*





## **PENNSYLVANIA OFFICE OF ATTORNEY GENERAL JOSH SHAPIRO**

### **GUIDANCE ON THE RIGHTS AND RESPONSIBILITIES OF PUBLIC SECTOR EMPLOYEES AND EMPLOYERS FOLLOWING THE U.S. SUPREME COURT'S *JANUS* DECISION**

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Public sector employees – police and firefighters, teachers, social workers, sanitation workers and many others – play a critical role in communities across the Commonwealth of Pennsylvania. They work hard each and every day to ensure public safety, protect public health, educate our children and provide other critical services to residents of Pennsylvania. Since the U.S. Supreme Court's decision in *Janus v. AFSCME Council 31*, 585 U.S. \_\_\_\_ (2018), the Office of Attorney General has received numerous inquiries regarding the impact the decision has on Pennsylvania public sector employees and employers. This guidance will answer some of those questions and clarify that the decision changes few rights of employees or obligations of employers.

#### **What is the *Janus* decision?**

The *Janus* decision overturns prior Supreme Court precedent that public sector employees who decline union membership may be required through collective bargaining to pay a fair share agency fee.

#### **What does the *Janus* decision change?**

The only change under *Janus* is that, as of June 27, 2018, public sector employers may no longer deduct fair share fees from a nonmember's wages, without the nonmember employee's "affirmative consent." Nothing in the decision precludes employees who are nonmembers from becoming dues paying union members or consenting to continue to pay a fee to the union. All other rights and obligations of public sector employers and employees under state law remain unchanged.

**Does the *Janus* decision authorize a public sector employer to require proof of union membership or change dues collection agreements?**

No. The *Janus* decision does not impact any agreements between a union and its members to pay union dues or any negotiated payroll dues deduction provisions in collective bargaining agreements. Existing membership cards and other agreements by union members to pay dues must continue to be honored. Public employee unions are not required to produce dues authorization cards for members from whom the employer has previously deducted dues.

**Does the *Janus* decision authorize a public sector employer to change unilaterally terms of a collective bargaining agreement?**

No. An employer cannot unilaterally change the terms of a collective bargaining agreement or a binding past practice, such as demanding new dues authorization cards for payroll deductions from union members. The *Janus* decision does not require existing union members to take any action to continue to be a member in a public sector union.

**Did the *Janus* decision affect collective action rights?**

No. Public sector employees retain their statutory rights under Pennsylvania law to organize and join unions; to collectively bargain through representatives of their own free choice on questions of wages, hours and other terms and conditions of employment; and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection – or to refrain from doing so. Employees have the right to be free from threats, interference or coercive statements when exercising their protected right to engage in concerted activity.

**After the *Janus* decision, can public employers interfere with public sector employees' collective action rights?**

No. Public sector employers are forbidden from interfering in the formation, existence or administration of a union, discriminating against or terminating an employee based on union membership or activity, or refusing to bargain in good faith with the union.

  
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**VERMONT ATTORNEY GENERAL ADVISORY:**  
**Public Sector Labor Rights and Obligations Following *Janus***

Public sector employees - including firefighters, police officers, teachers, public health employees, and other state workers - play a vital role in our communities across Vermont. They work hard every day to ensure public safety, protect public health, educate our children, and provide other essential services to Vermonters.

Attorney General T.J. Donovan issues this Advisory in response to the recent United States Supreme Court decision in *Janus v. AFSCME Council 31*, 585 U.S. \_\_\_\_ (2018). *Janus* overturns decades of well-established law and practice relating to public employers' deduction of fair share agency fees from public sector employees who decline union membership. Under *Janus*, a public employer may not deduct agency fees from a nonmember's wages without the employee's affirmative consent.

All other collective bargaining rights and obligations of public sector employees and employers remain the same under state law. Public employees retain their statutory rights under Vermont law to organize, join unions, and engage in collective action for mutual aid and protection. The Vermont Attorney General's Office issues this Advisory in affirmation of those rights and to provide initial guidance on the issue of union dues and agency fees.

**Collective Action Rights**

- Under Vermont law, the rights of public sector employees are unaffected by the *Janus* decision. These employees maintain the right to:
  - Organize.
  - Form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment.<sup>1</sup>
  - Engage in lawful, concerted activities for the purpose of bargaining or other mutual aid or protection.<sup>2</sup> 3 V.S.A. §§ 903(a), 1012; 16 V.S.A. § 1982; 21 V.S.A. § 1721.
- Public employees also have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity. 3 V.S.A. §§ 961, 966, 1026, 1031; 16 V.S.A. § 1982; 21 V.S.A. §§ 1726, 1728.

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<sup>1</sup> Certain classes of public sector employees may not be entitled to all of these enumerated rights including state workforce classified managers, confidential employees, and deputy sheriffs.

<sup>2</sup> A State employee may not strike or recognize a picket line while in the performance of his or her official duties. 3 V.S.A. § 903(b).

- Public employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to bargain in good faith with the union. 3 V.S.A. §§ 961, 1016, 1026; 16 V.S.A. §§ 1982, 2001; 21 V.S.A. §§ 1725, 1726.

### **Dues and Agency Fees**

- An employee whose position is within the bargaining unit of a union, and who chooses to be a member of the union, pays membership dues. An employee whose position is within the bargaining unit of the union, but who chooses not to be a member of the union, previously paid an agency fee to the union.
- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored. The *Janus* opinion only impacts the collection of agency service fees by public employers from individuals who decline union membership.
- Under *Janus*, a public employer may not deduct any agency fees from a nonmember's wages without the employee's affirmative consent.
- Employees who are nonmembers and paying agency fees as of June 27, 2018, may choose to become a dues-paying union member.
- Public employers may not threaten or coerce employees regarding union membership. 3 V.S.A. §§ 961, 966, 1026, 1031; 16 V.S.A. § 1982(c), 21 V.S.A. §§ 1726, 1728.
- Membership dues may still be collected through a payroll deduction.



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## Attorney General Ferguson issues advisory affirming labor rights and obligations in public workplaces

FOR IMMEDIATE RELEASE:

Jul 17 2018

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Attor  
Affirming Labor Right

Public sector employees play a critical role every day to ensure public safety, protect critical services in our communities.

The Attorney General issues this Advisory in response to the United States in *Janus v. AFSCME* (2018), which overturns decades of well-established law requiring payment of fair share agency fees from nonmembers. Under *Janus*, public employers may not require a union to collect agency fees from a nonmember.

All other rights and obligations of public employees remain. Public employees retain their statutory right to be represented by such organizations. The Attorney General issues this advisory in response to the issue of union dues and agency fees.

### **Collective Action Rights**

- Under Washington law, the rights of public employees in *Janus*. These employees maintain:
  - organize;
  - form, join, or assist any employee organization collectively through representation and other terms and conditions



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<sup>1</sup> For a list of the Washington state collective barga

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## **Dues and Agency Fees**

- The *Janus* decision does not impact pay union dues, and existing member pay dues should continue to be held as agency service fee by individuals
- Under *Janus*, public employers may not require employees to pay dues without the employee's affirmative consent
- Employees who are nonmembers may choose to become a dues paying union member
- Employees may pay dues through a union or may authorize a payroll deduction

## **Member Access and Information**

- Many public sector unions have negotiated with employer's facilities and equipment under a collective bargaining agreement.
- Under ESB 6229 and RCW 41.56, public employees have the right to request bargaining representatives reasonableness for the purpose of presenting information to the employer.



- Public employees have the right to addresses, protected from disclosure RCW 42.56 (with limited exceptions) representatives to fulfill their obligations
- Workers who believe their rights are violated may file a complaint with the Public Employment Relations Commission